



County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA
Chief Executive Officer

September 4, 2007

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**DEPARTMENT OF PUBLIC WORKS:
LAC+USC MEDICAL CENTER REPLACEMENT PROJECT
PSYCHIATRIC UNIT CONVERSION
AWARD SOLE-SOURCE CONSULTANT AGREEMENT
SPECS. 6847; C.P. 86905
(FIRST DISTRICT) (3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

Approve the modifications to the terms of the standard County of Los Angeles consultant agreement shown in the Rider with Johnson Controls, Inc. in an amount not to exceed of \$450,000 for the design and performance of low-voltage work associated with the Psychiatric Unit Conversion portion of the LAC+USC Medical Center Replacement Project.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the recommended action will allow the Department of Public Works (Public Works) to execute a sole-source consultant agreement with Johnson Controls, Inc. containing negotiated modifications to certain standard County of Los Angeles (County) contract terms in connection with the installation of tenant improvements for the Psychiatric Unit Conversion of the LAC+USC Medical Center Replacement project.

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

BACKGROUND

As part of the settlement of the Harris-Rodde litigation, the County agreed to provide 600 beds at the LAC+USC Medical Center Replacement project and an additional 50 psychiatric beds off-site. Of the 600 beds included in the LAC+USC Medical Center Replacement project, 24 beds were designated as psychiatric beds.

On May 15, 2007, the Board of Supervisors (Board) approved the issuance of a sole-source agreement for Johnson Controls, Inc., a subcontractor on the LAC+USC Medical Center Replacement project, for a not-to-exceed amount of \$450,000, to perform the design and installation of the low-voltage work in the Psychiatric Unit Conversion. Johnson Controls, Inc. is responsible for the low-voltage electrical systems, including critical nurse call/code blue, fire alarm, building automation system, and security system in the Replacement Project. These systems are proprietary and as such, if other vendors were to modify the work that has already been installed in the hospital, the warranties would be jeopardized. Further, use of a different vendor could impact the project's schedule and diminish efforts to standardize operations and maintenance activities within the LAC+USC Medical Center.

Public Works has negotiated with the consultant Johnson Controls, Inc., within the Board-approved contract amount. As part of the negotiations, Johnson Controls, Inc., requested modifications to certain standard terms of the County's consultant services agreement, and after much negotiation and compromise by both sides, Public Works recommends that the Board authorize certain modifications to the County standard terms, which modifications are reflected on the Rider (refer to Attachment B) attached to the agreement. The Rider, which Public Works negotiated in close consultation with County Counsel, provides for the following:

- Amendment to indemnification provisions of the contract, which require the consultant to indemnify the County for liability resulting from the consultant's negligence, including paying for the County's defense costs and legal fees, to specify that the consultant is required to pay for the County's "reasonable" defense costs and legal fees where the consultant is obligated to defend the County. This "reasonableness" proviso also applies to defense costs incurred under the Fair Labor Standards Act.

- Addition of a "claw-back" provision to the consultant's indemnity obligations, which provides that if a court ultimately determined that the County was jointly negligent with the consultant for alleged damages in an action brought by a third-party claimant, the consultant would be entitled to recover its defense costs from the County in the same percentage that the County was determined by the court to have been proportionately at fault.
- Modification to the workers' compensation insurance provision to allow for the consultant to provide a qualified self-insurance program in accordance with California law.
- Addition of a warranty that work shall be free from defects in design, material, and workmanship for a period of one year from the substantial completion date and the consultant shall, at County's option, repair, replace, or re-perform defective work or services.
- Addition of a new hazardous materials provision, which provides for the consultant to be informed of the presence of asbestos-containing substance or other hazardous substances, if the County possesses such information, and that the County is responsible for the cost of remediating any pre-existing hazardous materials at the site.
- Addition of a new limitation of liability provision, which provides that neither party shall be liable to the other for consequential damages arising out of the agreement in excess of Five Million Dollars (\$5,000,000).

With the concurrence of the Chief Executive Office, Public Works believes that these proposed modifications to the standard County terms are reasonable and appropriate for purposes of this agreement. Accordingly, it is requested that the Director of Public Works be authorized to execute a consultant agreement with Johnson Controls, Inc., containing the proposed modifications to the standard County terms.

Implementation of Strategic Plan Goal

This action meets the Countywide Strategic Plan Goal of Service Excellence (Goal 1) by promoting best practices for patient care and the Goal of Fiscal Responsibility (Goal 4) by investing in public health infrastructure.

Consistency with Health Services System Redesign

The action meets the Department of Health Services' strategic goals by improving the health care provided by the Department of Health Services and enhancing the health of the residents of the County of Los Angeles.

FISCAL IMPACT/FINANCING

The total estimated project cost, including plans and specifications, plan check, tenant improvements, utility/equipment connection fees, consultant services, miscellaneous expenditures, and County services totals \$8,970,000 and was approved by your Board on May 15, 2007.

The Psychiatric Unit Conversion project is funded by \$6,600,000 from Tobacco Settlement Program Budget and \$2,370,000 from the 2006-07 LAC+USC Healthcare Network Operating Budget.

We have reviewed this recommendation with the Project Advisory Committee.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

A standard agreement, including a Rider containing certain modifications to the standard County terms as discussed above, which agreement has been approved as to form by County Counsel, will be used. The standard Board-directed clauses that provide for agreement termination, renegotiation, and hiring qualified displaced County employees will be included in the agreement.

As required by your Board, language has been incorporated into the project specifications stating that the contractor shall notify its employees, and shall require each subcontractor to notify its employees; about Board Policy 5.135 (Safely Surrendered Baby Law) and that they may be eligible for Federal Earned Income Credit under the Federal income tax laws.

The project's specifications and agreements also require firms to show full compliance with Los Angeles County Code Chapter 2.200 (Child Support Compliance Program) and Chapter 2.203 (Contractor Employee Jury Service Program).

As requested by your Board on August 12, 1997, and as a threshold requirement for consideration for contract award, Johnson Controls, Inc. has attested to their willingness to consider Greater Avenues for Independence Program/General Relief Opportunities for Work participants for future employment.

The Honorable Board of Supervisors
September 4, 2007
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ENVIRONMENTAL DOCUMENTATION

On April 11, 2006, your Board found the Psychiatric Unit Conversion project categorically exempt under the California Environmental Quality Act.

CONTRACTING PROCESS

Johnson Controls, Inc. is recommended to be contracted on a sole-source basis because of the specialized nature of their work and the need to maintain continuity with the systems throughout the balance of the hospital.

CONCLUSION

Upon approval of the recommendations, please forward an adopted, stamped copy of the Board letter to my office.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer

WTF:DLW:DL
JSE:DJT:DKM:mc

Attachment

c: County Counsel
Department of Public Works
Department of Health Services
Department of Public Social Services (GAIN/GROW Program)
Project Advisory Committee

September 4, 2007

ATTACHMENT A

**DEPARTMENT OF PUBLIC WORKS:
LAC+USC MEDICAL CENTER REPLACEMENT PROJECT
PSYCHIATRIC UNIT CONVERSION
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SPECS. 6847; C.P. 86905**

I. PROJECT SCHEDULE

Project Activity	Revised Completion Date	Actual Completion Date
Board Award Design Contract	04/06	04/06
Construction Documents	10/06	12/06
Jurisdictional Approvals	05/07	08/07
Award of Construction	07/07	
Construction Start	08/07	
Anticipated Completion of new Acute Care Unit	03/08	

II. PROJECT BUDGET SUMMARY

Budget Category	Current Board-Approved Budget	Impact of this Action
Land Acquisition		
Construction		
Construction Change Orders		
Construction Total	\$6,150,000	\$0
Equipment (Medical, Telecommunications/Data, and FFE)	\$ 337,500	\$0
Architectural Services	\$1,025,000	\$0
Consultants and Vendor Services	\$1,015,000	
Permits and Fees	\$ 187,500	\$0
County Services	\$ 255,000	\$0
Total	\$8,970,000	\$0

September 4, 2007

ATTACHMENT B

**DEPARTMENT OF PUBLIC WORKS:
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SEE ATTACHED CONSULTANT SERVICES AGREEMENT RIDER.

CONSULTANT SERVICES AGREEMENT RIDER

THIS RIDER TO THE CONSULTANT SERVICES AGREEMENT (the "Rider") is entered into as of the ____ day of _____, 2007 by and between Johnson Controls, Inc., a Wisconsin Corporation (hereinafter referred to as "Consultant") and County of Los Angeles (hereinafter referred to as "County").

RECITALS

WHEREAS, Consultant and County entered into that certain Agreement for Consultant Services, dated _____, 2007 (the "Agreement"); and

WHEREAS, Consultant and County wish to amend certain of the terms and conditions set forth in the Agreement.

NOW THEREFORE, in consideration of the mutual covenants, agreements and conditions herein contained and for other and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, County and Consultant agree as follows:

CONSULTANT SERVICES AGREEMENT

1. Section 8, Indemnification, of the Agreement is hereby amended as follows:

SECTION 8. INDEMNIFICATION

Line 3 – After "including" please insert: "reasonable"

Line 7 – After "or connected with," please insert: "Consultant's"

At end of Section, please insert the following: "In the event of a final adjudication of joint or concurrent negligence or fault of the Consultant and the County in any action in which Consultant is obligated to provide a defense to County under any provision of this Agreement, Consultant shall be entitled to recover the costs of defense in proportion to the relative percentage, finally adjudicated, of negligence or fault of County, except if the County's negligence is determined to be passive, including but not limited to failure to discover or prevent the active negligence of Consultant."

2. Section 26, Fair Labor Standards Act, of the Agreement is hereby amended as follows:

SECTION 26. FAIR LABOR STANDARD'S ACT

Line 4 – After "court costs, and" please insert: "reasonable"

3. **The Agreement is hereby amended by the incorporation of a new Section 35, Warranty, as follows:**

NEW SECTION 35. WARRANTY

"Consultant warrants that the materials and equipment furnished by Consultant will be of good quality and new; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform to the requirements of the Contract Documents. Consultant warrants that the Work shall be free from defects in material and workmanship arising from normal usage for a period of one (1) year from the Substantial Completion Date and that its Services will be free from defects in workmanship, design and material until the end of the Term, or for one (1) year, whichever is earlier. Upon written notice from the County, Consultant shall, at its option, repair or replace the defective Work or re-perform defective Services. These warranties shall not extend to any Work or Services that have been abused, altered, misused or repaired by the County or third parties without the supervision of and prior written approval of Consultant, or if Consultant serial numbers or warranty date decals have been removed or altered. The County must promptly report any failure of the equipment to Consultant in writing. All replaced equipment becomes the Consultant's property.

"THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. County understands that except to the extent that Consultant is providing the Work, Consultant shall be considered a service provider and not a merchant or a vendor of goods. If Consultant installs or furnishes equipment under this Agreement, and that equipment, or any part thereof is covered by a warranty from the manufacturer, Consultant will transfer the benefits of that manufacturer's warranty to County, if (i) permitted pursuant to the terms of the warranty, and (ii) this Agreement with County terminates before the equipment manufacturer's warranty expires."

4. **The Agreement is hereby amended by the incorporation of a new Section 36, Hazardous Materials, as follows:**

NEW SECTION 36. HAZARDOUS MATERIALS

"Asbestos-Containing Substances: Neither County nor Consultant desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of asbestos-containing Substances ("ACM"). Consistent with applicable laws, County shall supply Consultant with any information in its possession relating to the presence of ACM at any of its facilities where Consultant undertakes any Work or Services that may result in the disturbance of ACM. It is Consultant's policy to seek certification for facilities

constructed prior to 1982 that no ACM is present, and County shall provide such certification for buildings it owns, or aid Consultant in receiving such certification from facility owners in the case of buildings that it does not own, if Consultant will undertake Work or Services in the facility that could disturb ACM. If either County or Consultant becomes aware of or suspects the presence of ACM that may be disturbed by Consultant's Work or Services, it shall immediately stop the Work or Services in the affected area and notify the other's contacts. As between County and Consultant, County shall be responsible at its sole expense for addressing the potential for or the presence of ACM in conformance with all applicable laws and addressing the impact of its disturbance before Consultant continues with its Work or Services, unless Consultant had actual knowledge that ACM was present and acted in disregard of that knowledge, in which case (i) Consultant shall be responsible at its sole expense for remediating areas impacted by the disturbance of the ACM, and (ii) County shall resume its responsibilities for the ACM after Consultant's remediation has been completed.

Other Hazardous Substances: For other Hazardous Substances that may be otherwise present at its facilities ("Non-Consultant Hazardous Substances"), County shall supply Consultant with any information in its possession relating to the presence of such Substances if their presence may affect Consultant's performance of the Work or Services. If either County or Consultant becomes aware of or suspects the presence of Non-Consultant Hazardous Substances that may interfere with Consultant's Work or Services, it shall immediately stop the Work or Services in the affected area and notify the other's contacts. As between County and Consultant, County shall be responsible at its sole expense for removing and disposing of Non-Consultant Hazardous Substances from its facilities and the remediation of any areas impacted by the release of the Non-Consultant Hazardous Substances, unless Consultant had actual knowledge that Non-Consultant Hazardous Substances were present and acted in disregard of that knowledge, in which case (i) Consultant shall be responsible at its sole expense for the remediation of any areas impacted by its release of such Hazardous Substances, and (ii) County shall remain responsible at its sole expense for the removal of Hazardous Substances that have not been released and for releases not resulting from Consultant's performance of the Work or Services."

5. **The Agreement is hereby amended by the incorporation of a new Section 37, Limitation of Liability, as follows:**

NEW SECTION 37. LIMITATION OF LIABILITY

"Notwithstanding any other provision of this Agreement to the contrary, neither party shall be liable to another party or its affiliates for consequential damages in excess of Five Million Dollars (\$5,000,000)."

6. Attachment C1 of the Agreement is hereby amended as follows:

Indemnification and Insurance Provisions

ARTICLE 1. INDEMNIFICATION

New Fourth Paragraph

"In the event of a final adjudication of joint or concurrent negligence or fault of the Consultant and the County in any action in which Consultant is obligated to provide a defense to County under any provision of this Agreement, Consultant shall be entitled to recover the costs of defense in proportion to the relative percentage, finally adjudicated, of negligence or fault of County, except if the County's negligence is determined to be passive, including but not limited to failure to discover or prevent the active negligence of Consultant."

ARTICLE 2 INSURANCE

Section B – Workers' Compensation

Line 1 – Following "Workers' Compensation" please insert: "or Qualified Self-Insurance"

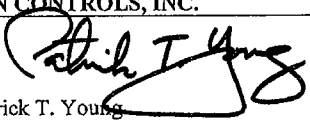
[ADDITIONAL EDITS TO BE SEPARATELY PROVIDED.]

MISCELLANEOUS

1. Except as modified or otherwise provided herein, the existing terms, covenants, agreements, responsibilities and obligations contained in the Contract shall remain in full force and effect through the term of the Agreement. In the event of conflict between the terms and conditions of the Agreement and the terms and conditions of this Amendment, the terms and conditions of this Amendment shall prevail.
2. This Amendment is effective upon the date of execution by both parties.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed by their duly authorized representatives on the dates written below:

COUNTY OF LOS ANGELES	JOHNSON CONTROLS, INC.
Signature	Signature: 
Name	Name: Patrick T. Young
Title: <u>Deputy Director</u> <u>Department of Public Works</u>	Title: <u>Regional Fire & Security Manager</u>
Date:	Date:

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By: _____

September 4, 2007

ATTACHMENT C

**DEPARTMENT OF PUBLIC WORKS:
LAC+USC MEDICAL CENTER REPLACEMENT PROJECT
PSYCHIATRIC UNIT CONVERSION
AWARD SOLE-SOURCE CONSULTANT AGREEMENT
SPECS. 6847; C.P. 86905**

SEE ATTACHED AGREEMENT FOR CONSULTANT SERVICES WITH
ATTACHMENTS C 1 AND C 2.

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, made and entered into this _____ day of _____, 2007.

BY AND BETWEEN

COUNTY OF LOS ANGELES, a body
corporate and politic, hereinafter referred
to as COUNTY,

AND

JOHNSON CONTROLS, INC., an
Individual, hereinafter referred to as
Consultant,

COUNTY has determined that it is a matter of public convenience and necessity to engage the specialized services of a Consultant to provide design and installation of various low-voltage system modifications for the Psychiatric Unit Conversion at the LAC+USC Medical Center Replacement Project.

Consultant is a recognized professional with extensive experience and training in this specialized field. In rendering these services, Consultant shall, at a minimum, exercise the ordinary care and skill expected of the average practitioner in Consultant's profession acting under similar circumstances. The work will involve the performance of professional, expert, and/or technical services of a temporary or part-time duration; and

The parties hereto do mutually agree as follows:

1. Definition

COUNTY means either COUNTY; COUNTY, as agent for such joint powers authority or nonprofit corporation as may be involved in the issuance of bonds, certificates of participation, or other evidences of indebtedness to finance the work contemplated herein; or said joint powers authority or nonprofit corporation.

2. Consultant's Services

The scope of work shall be as outlined in the Attachment dated May 15, 2007. No work shall commence on this project until a written Notice to Proceed is issued by COUNTY.

3. Consideration

In consideration of the performance by Consultant in a manner satisfactory to COUNTY of the services described in Article 2 above, including receipt and acceptance of such work by Director of the COUNTY of Los Angeles Department of Public Works (hereinafter called Director), COUNTY agrees to pay Consultant a maximum not to exceed fee of Four Hundred Fifty Thousand Hundred Dollars (\$450,000).

COUNTY shall compensate Consultant as follows:

a. Monthly payments for the work accomplished shall be made upon verification and acceptance of such work by Director, as stated in the Attachment dated May 15, 2007, up to a maximum of \$450,000. Monthly invoices shall be accompanied by an analysis of work completed for the invoice period. This analysis shall be prepared in a format satisfactory to Director.

b. Supplemental Consultant Services may be required at COUNTY'S discretion, upon prior written authorization by Director, and will be based on Consultant's fee schedule on file with Director.

c. If Cost of Living Adjustments (COLA) are provided in the attachment, COUNTY shall limit COLAs to the lesser of: 1) the average salary increase or decrease granted to COUNTY employees or 2) the increase or decrease from the previous fiscal year's U.S. Department of Labor Bureau of Labor Statistics' Urban Consumer Price Index for Los Angeles-Riverside-Orange COUNTY, CA. If the COLA is based on the CPI, the adjustment shall be based on the change in the CPI from time of execution of this CONTRACT to the time at which the COLA is to be made. In the event fiscal circumstances ultimately prevent the Board of Supervisors from approving any increase in employee salaries for a fiscal year, Consultant will not receive a COLA for the CONTRACT period which coincides with that fiscal year.

d. In the event that budget reductions occur in any fiscal year covered by this AGREEMENT that may cause COUNTY to consider terminating this AGREEMENT, the parties agree to attempt to renegotiate the terms of this AGREEMENT to reduce the cost thereof in lieu of termination under the termination provisions of the CONTRACT.

e. All funds for payment of services rendered after June 30 of the current fiscal year are subject to COUNTY'S legislative appropriation for this purpose. Payments for services following June 30 of each fiscal year are dependent upon the same action. Notwithstanding any other provision of this AGREEMENT, COUNTY shall not be obligated for Consultant's performance hereunder or by any provision of this AGREEMENT during any of COUNTY'S future fiscal years unless and until

COUNTY'S Board of Supervisors appropriates funds for this AGREEMENT in COUNTY'S budget for each future fiscal year, and in the event that funds are not appropriated for this AGREEMENT, this AGREEMENT shall terminate as of June 30 of the last fiscal year for which funds were appropriated. COUNTY shall notify Consultant in writing of such nonappropriation of funds at the earliest possible date.

f. Consultant will not be required to perform services which will exceed the CONTRACT amount, scope of work, and CONTRACT dates without amendment to this AGREEMENT.

Consultant will not proceed with additional services without prior written authorization. Consultant will not be paid for any expenditures beyond the CONTRACT amount stipulated without amendment to this AGREEMENT.

g. Consultant will notify COUNTY when CONTRACT amount has been incurred up to 75% of the CONTRACT total.

4. Equipment and Supplies

Consultant agrees to furnish all necessary equipment and supplies used in the performance of the aforementioned services.

5. COUNTY'S Responsibility

COUNTY will make available drawings, specifications, and other records as available in COUNTY Department of Public Works' file.

6. COUNTY'S Representative

Director, or his authorized representative, shall represent COUNTY in all matters pertaining to the services to be rendered pursuant to this AGREEMENT.

7. Term and Termination

The terms of this AGREEMENT shall commence on the date stipulated in the Notice to Proceed, and unless otherwise modified, shall terminate on the date that the work is accepted by COUNTY. COUNTY may, at its sole option and discretion, cancel or terminate this AGREEMENT, without any liability other than payment for work already performed, up to the date of termination by giving three days written notice of such termination to Consultant. Consultant shall be paid the reasonable value of his services rendered. In the event of any such termination by COUNTY, Consultant shall provide to COUNTY a termination report consisting of all drawings, specifications, reports, and data accumulated to the date of such termination in a form capable of assimilation for use by COUNTY.

8. Indemnification

Consultant agrees to indemnify, defend, and save harmless COUNTY, their Board of Supervisors, officers, agents, and employees from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from, or connected with, Consultant's negligent, willful, or unlawful actions, operations, or services hereunder including any Workers' Compensation suits, liability, or expense arising from, or connected with, services pursuant to this AGREEMENT.

9. Liability and Insurance

Two alternative Indemnification and Insurance Provisions are set forth in Attachments 2 and 3 of this AGREEMENT.

Consultant has selected one of the two alternative Indemnification and Insurance Provisions and has indicated its selection by initialing the selected alternative as follows:

Alternative 1 _____ Alternative 2 _____

This AGREEMENT shall be subject to the Indemnification and Insurance Provisions set forth in the alternative identified by Consultant above. Such provision is hereby incorporated into this Article by reference.

10. Anti-Discrimination

The following provisions are required by Section 4.32.010 et seq. of the Los Angeles COUNTY Code:

Consultant certifies and agrees that all persons employed by Consultant, its affiliates, subsidiaries, or holding companies are, and will be, treated equally by Consultant without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with state and Federal anti-discrimination laws. Consultant further certifies and agrees that it will deal with its subconsultants, bidders, and vendors without regard to or because of race, religion, ancestry, national origin, or sex. Consultant agrees to allow access to its employment records during regular business hours to verify compliance with the foregoing provisions when so requested by COUNTY.

Consultant specifically recognizes and agrees that if COUNTY finds that any of the foregoing provisions have been violated, the same shall constitute a material breach of CONTRACT upon which COUNTY may determine to cancel, terminate, or suspend the CONTRACT. While COUNTY reserves the right to determine individually that the anti-discrimination provision of the CONTRACTS have been violated, in addition, a

determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Consultant has violated state or Federal anti-discrimination laws shall constitute a finding by COUNTY that Consultant has violated the anti-discrimination provisions of the CONTRACT.

At its option, and in lieu of canceling, terminating, or suspending the CONTRACT, COUNTY may impose damages for any violation of the anti-discrimination provisions of this paragraph, in the amount of Two Hundred Dollars (\$200) for each violation found and determined. COUNTY and Consultant specifically agree that the aforesaid amount shall be imposed as liquidated damages, and not as a forfeiture or penalty. It is further specifically agreed that the aforesaid amount is presumed to be the amount of damages sustained by reason of any such violation, because from the circumstances and the nature of the violation, it is impracticable and extremely difficult to fix actual damages.

11. Independent Contractor Status

This AGREEMENT is by and between COUNTY of Los Angeles and Consultant and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between COUNTY and Consultant.

Consultant understands and agrees that all persons furnishing services to COUNTY pursuant to this AGREEMENT are, for purposes of Workers' Compensation liability, employees solely of Consultant and not of COUNTY.

Consultant shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any person for injuries arising from, or connected with, services performed on behalf of Consultant pursuant to this AGREEMENT.

12. COUNTY'S Quality Assurance Plan

COUNTY, or its agent, will evaluate Consultant's performance under this AGREEMENT on not less than an annual basis. Such evaluation will include assessing Consultant's compliance with all CONTRACT terms and performance standards. Consultant deficiencies which COUNTY determines are severe or continuing, and that may place performance of the AGREEMENT in jeopardy if not corrected, will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by COUNTY and Consultant. If improvement does not occur consistent with the corrective action measures, COUNTY may terminate this AGREEMENT or impose other penalties as specified in this AGREEMENT.

13. Assignment

This AGREEMENT shall not be assigned without the prior written consent of COUNTY. Any attempt to assign without such consent shall be void and confer no rights on any third parties.

14. Forum Selection

Consultant hereby agrees to submit to the jurisdiction of the courts of the State of California. The exclusive venue of any action brought by Consultant, on Consultant's behalf or on the behalf of any subconsultant, which arises from this AGREEMENT or is concerning or connected with services performed pursuant to this AGREEMENT, shall be deemed to be in the courts of the State of California located in the COUNTY of Los Angeles, California.

15. Conflict of Interest

No COUNTY employee in a position to influence the award of this AGREEMENT or any competing AGREEMENT, and no spouse or economic dependent of such employee, shall be employed in any capacity by Consultant herein, or have any other direct or indirect financial interest in this AGREEMENT.

16. Prohibition From Involvement in Bidding Process

Consultant understands and agrees that neither it nor its subsidiaries shall be involved in any way in the bidding process on any Request for Proposal developed or prepared by or with the assistance of Consultant's services rendered pursuant to this AGREEMENT, either as a prime Contractor or subcontractor, or as a Consultant to any other prime Contractor or subcontractor. Any such involvement by Consultant shall result in the rejection by the COUNTY of the bid by the prime Contractor in question.

17. Lobbying

Consultant and each COUNTY lobbyist or COUNTY lobbying firm as defined in Los Angeles COUNTY Code Section 2.160.010, retained by Consultant, shall fully comply with COUNTY Lobbyist Ordinance, Los Angeles COUNTY Code Chapter 2.160. Failure on the part of Consultant or any COUNTY lobbyist or COUNTY lobbying firm retained by Consultant to fully comply with COUNTY Lobbyist Ordinance shall constitute a material breach of this CONTRACT, upon which COUNTY may immediately terminate or suspend this CONTRACT.

18. Gratuities

It is improper for any COUNTY officer, employee, or agent to solicit consideration, in any form, from Consultant with the implication, suggestion, or statement that Consultant's provision of the consideration may secure more favorable treatment for Consultant in the award of the CONTRACT or that Consultant's failure to provide such consideration may negatively affect COUNTY'S consideration of Consultant's submittal. Consultant shall not offer or give, either directly or through an intermediary, consideration, in any form, to a COUNTY officer, employee, or agent for the purpose of securing favorable treatment with respect to the award of the CONTRACT.

Consultant shall immediately report any attempt by a COUNTY officer, employee, or agent to solicit such improper consideration. The report shall be made either to COUNTY manager charged with the supervision of the employee, or to COUNTY Auditor-Controller's Employee Fraud Hotline, at (213) 974-0914 or (800) 544-6861. Failure to report such a solicitation may result in Consultant's submittal being eliminated from consideration.

Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

19. Consultant's Warranty of Adherence to COUNTY'S Child Support Compliance Program

Consultant acknowledges that COUNTY has established a goal of ensuring that all individuals who benefit financially from COUNTY through CONTRACT are in compliance with their court-ordered child, family, and spousal support obligations in order to mitigate the economic burden otherwise imposed upon COUNTY and its taxpayers.

As required by COUNTY'S Child Support Compliance Program (COUNTY Code Chapter 2.200) and without limiting Consultant's duty under this CONTRACT to comply with all applicable provisions of law, Consultant warrants that it is now in compliance and shall during the term of this CONTRACT maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or DISTRICT Attorney Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

Failure of Consultant to maintain compliance with these requirements shall constitute a default by Consultant under this CONTRACT. Without limiting the rights and remedies available to COUNTY under any other provision of this CONTRACT, failure to cure such default within 90 days of notice by the Los Angeles COUNTY Child Support Services Department shall be grounds upon which COUNTY Board of Supervisors may terminate this CONTRACT.

20. Consultant's Acknowledgment of COUNTY'S Commitment to Child Support Enforcement

Consultant acknowledges that COUNTY places a high priority on the enforcement of child support laws and the apprehension of child support evaders. Consultant understands that it is COUNTY'S policy to encourage all COUNTY consultants to voluntarily post COUNTY'S L.A.'s Most Wanted: Delinquent Parents poster in a prominent position at Consultant's place of business. The COUNTY of Los Angeles Child Support Services Department will supply Consultant with the poster to be used.

21. Termination For Improper Consideration

COUNTY may, by written notice to Consultant, immediately terminate the right of Consultant to proceed under this AGREEMENT if it is found that consideration, in any form, was offered or given by Consultant, either directly or through an intermediary, to any COUNTY officer, employee, or agent with the intent of securing the AGREEMENT or securing favorable treatment with respect to the award, amendment, or extension of the AGREEMENT or the making of any determinations with respect to Consultant's performance pursuant to the AGREEMENT. In the event of such termination, COUNTY shall be entitled to pursue the same remedies against Consultant as it could pursue in the event of default by Consultant.

Consultant shall immediately report any attempt by a COUNTY officer or employee to solicit such improper consideration. The report shall be made either to COUNTY manager charged with the supervision of the employee or to COUNTY Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6881.

Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

22. Consideration of GAIN/GROW Program Participants for Employment

Should Consultant require additional or replacement personnel after the effective date of this AGREEMENT, Consultant shall give consideration for any such employment openings to participants in COUNTY'S Department of Public Social Services' Greater Avenues for Independence (GAIN) or General Relief Opportunity for Work (GROW) Program who meet Consultant's minimum qualifications for the open position. COUNTY will refer GAIN/GROW participants by job category to the Consultant.

23. Notice to Employees Regarding the Federal Earned Income Credit

Consultant shall notify its employees, and shall require each subconsultant to notify its employees, that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws. Such notice shall be provided in accordance with the requirement set forth in Internal Revenue Service Notice 1015.

24. Reduction of Solid Waste

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the COUNTY landfills, the Consultant agrees to use recycled-content paper to the maximum extent possible on the project.

25. COUNTY Rights

The COUNTY may employ, either during or after performance of this CONTRACT, any right of recovery the COUNTY may have against the Consultant by any means it deems appropriate including, but not limited to, set-off, action at law or in equity, withholding, recoupment, or counterclaim. The rights and remedies of the COUNTY under this CONTRACT are in addition to any right or remedy provided by California law.

26. Fair Labor Standards Act

Consultant shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless COUNTY, its agents, officers and employees from any and all liability including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law including, but not limited to, the Federal Fair Labor Standards Act for services performed by Consultant's employees for which COUNTY may be found jointly or solely liable.

27. Prevailing Wage Requirements

Consultant shall comply with all applicable prevailing wage requirements. The subject project is a public work as defined in Section 1720 of the California Labor Code.

28. Employment Eligibility Verification

Consultant warrants that it fully complies with all Federal statutes and regulations regarding employment of aliens and others, and that all its employees performing services hereunder meet the citizenship or alien status requirements contained in Federal statutes and regulations. Consultant shall obtain, from all covered employees performing services hereunder, all verifications and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. Consultant shall retain such documentation for all covered employees for the period prescribed by law. Consultant shall indemnify, defend, and hold harmless COUNTY, its officers and employees from employer sanctions and any other liability which may be assessed against Consultant or COUNTY in connection with any alleged violation of Federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this AGREEMENT.

29. Consultant Responsibility and Debarment

a. A responsible Consultant is a Consultant who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the CONTRACT. It is the COUNTY'S policy to conduct business only with responsible Consultants.

b. The Consultant is hereby notified that, in accordance with Chapter 2.202 of the COUNTY Code, if the COUNTY acquires information concerning the performance of the Consultant on this or other CONTRACTS which indicates that the Consultant is not responsible, the COUNTY may, in addition to other remedies provided in the CONTRACT, debar the Consultant from bidding or proposing on, or being awarded, and/or performing work on COUNTY CONTRACTS for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing CONTRACTS the Consultant may have with the COUNTY.

c. The COUNTY may debar a Consultant if the Board of Supervisors finds, in its discretion, that the Consultant has done any of the following: (1) violated a term of a CONTRACT with the COUNTY or a nonprofit corporation created by the COUNTY; (2) committed an act or omission which negatively reflects on the Consultant's quality, fitness or capacity to perform a CONTRACT with the COUNTY, any other public entity, or a nonprofit corporation created by the COUNTY, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the COUNTY or any other public entity.

d. If there is evidence that the Consultant may be subject to debarment, the Department will notify the Consultant in writing of the evidence which is the basis for the proposed debarment and will advise the Consultant of the scheduled date for a debarment hearing before the Contractor Hearing Board.

e. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Consultant and/or the Consultant's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Consultant should be debarred, and, if so, the appropriate length of time of the debarment. The Consultant and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.

f. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Hearing Board.

g. If the Consultant has been debarred for a period longer than five years, that Consultant may, after the debarment has been in effect for at least five years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The COUNTY may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Consultant has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the COUNTY.

h. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Consultant has been debarred for a period longer than five years; (2) the debarment has been in effect for at least five years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

i. These terms shall also apply to subconsultants of COUNTY Consultants.

30. Compliance with Jury Service Program

This CONTRACT is subject to provisions of the COUNTY'S ordinance entitled Contractor Employee Jury Service (Jury Service Program) as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles COUNTY Code.

a. Unless Contractor has demonstrated to the COUNTY'S satisfaction either that Contractor is not a Contractor as defined under the Jury Service Program (Section 2.203.020 of the COUNTY Code) or that Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the COUNTY Code), Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.

b. For purposes of this Section, Contractor means a person, partnership, corporation or other entity which has a CONTRACT with the COUNTY or a subcontract with a COUNTY contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more COUNTY CONTRACTS or subcontracts. Employee means any California resident who is a full-time employee of Contractor. Full-time means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the COUNTY, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90

days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Contractor uses any subcontractor to perform services for the COUNTY under the CONTRACT, the subcontractor shall also be subject to the provisions of this Section. The provisions of this Section shall be inserted into any such subcontract AGREEMENT and a copy of the Jury Service Program shall be attached to the AGREEMENT.

c. If Contractor is not required to comply with the Jury Service Program when the CONTRACT commences, Contractor shall have a continuing obligation to review the applicability of its exception status from the Jury Service Program, and Contractor shall immediately notify COUNTY if Contractor at any time either comes within the Jury Service Program's definition of Contractor or if Contractor no longer qualifies for an exception to the Program. In either event, Contractor shall immediately implement a written policy consistent with the Jury Service Program. The COUNTY may also require, at any time during the CONTRACT and at its sole discretion, that Contractor demonstrate to the COUNTY'S satisfaction that Contractor either continues to remain outside the Jury Service Program's definition of Contractor and/or that Contractor continues to qualify for an exception to the Program.

d. Contractor's violation of this Section of the CONTRACT may constitute a material breach of the CONTRACT. In the event of such material breach, COUNTY may, in its sole discretion, terminate the Contractor and/or bar Contractor from the award of future COUNTY CONTRACTS for a period of time consistent with the seriousness of the breach.

31. No Payment for Services Provided Following Expiration/Termination of AGREEMENT

Contractor shall have no claim against COUNTY for payment for any money or reimbursement, of any kind whatsoever, for any service provided by Contractor after the expiration or other termination of this AGREEMENT. Should Contractor receive any such payment it shall immediately notify COUNTY and shall immediately repay all such funds to COUNTY. Payment by COUNTY for services rendered after expiration/termination of this AGREEMENT shall not constitute a waiver of COUNTY'S right to recover such payment from Contractor. This provision shall survive the expiration or other termination of this AGREEMENT.

32. Notice to Employees Regarding the Safely Surrendered Baby

The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles COUNTY, and how to safely surrender a baby. The fact sheet is available on the Internet at www.babysafela.org for printing purposes.

The Contractor acknowledges that the COUNTY places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the COUNTY'S policy to encourage all COUNTY Contractors to voluntarily post the COUNTY'S Safely Surrendered Baby Law poster in a prominent position at the Contractor's place of business. The COUNTY'S Department of Children and Family Services will supply the Contractor with the poster to be used.

33. Assignment by Consultant

a. Consultant shall not assign its rights or delegate its duties under the AGREEMENT, or both, whether in whole or in part, without the prior written consent of COUNTY, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this paragraph, COUNTY consent shall require a written amendment to the AGREEMENT, which is formally approved and executed by the parties. Any payments by COUNTY to any approved delegate or assignee on any claim under the AGREEMENT shall be deductible, at COUNTY'S sole discretion, against the claims which Consultant may have against COUNTY.

b. Shareholders, partners, members, or other equity holders of Consultant may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Consultant to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the AGREEMENT, such disposition is an assignment requiring the prior written consent of COUNTY in accordance with applicable provisions of this AGREEMENT.

c. Any assumption, assignment, delegation, or takeover of any of the Consultant's duties, responsibilities, obligations, or performance of same by any entity other than the Consultant, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without COUNTY'S express prior written approval, shall be a material breach of the AGREEMENT which may result in the termination of the AGREEMENT. In the event of such termination, COUNTY shall be entitled to pursue the same remedies against Consultant as it could pursue in the event of default by Consultant.

34. Notices

Any notice required or desired to be given pursuant to this AGREEMENT shall be given in writing and addressed as follows:

<u>COUNTY</u>	<u>CONSULTANT</u>
Department of Public Works	Johnson Controls, Inc.
Architectural Engineering Division	5770 Warland Drive
CONTRACTS & Operations, 8th Floor	Santa Ana, California 92705
900 South Fremont Avenue	(714) 835-0249 Telephone
Alhambra, CA 91803	(714) 835-1957 Fax
(818) 458-2587	

The address for notice may be changed by giving notice pursuant to this paragraph.

34. Entire AGREEMENT

This CONTRACT constitutes the entire AGREEMENT between COUNTY and Consultant and may be modified only by further written AGREEMENT between the parties hereto.

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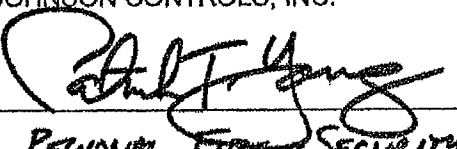
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IN WITNESS HEREOF, the COUNTY has, by order the Board of Supervisors caused these presents to be subscribed by the Director of the Department of Public Works, and the Consultant has hereunto subscribed its corporate name and affixed its corporate seal by its duly authorized officers this _____ day of _____, 2007.

COUNTY OF LOS ANGELES

JOHNSON CONTROLS, INC.

By _____
Deputy Director
Department of Public Works

By  _____
REGIONAL FIRE & SECURITY Mgr.
By _____

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By _____
Deputy

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6/4/2006

May 15, 2007

ATTACHMENT A

**LAC+USC MEDICAL CENTER REPLACEMENT PROJECT
PSYCHIATRIC UNIT CONVERSION
CONSULTANT AGREEMENT SERVICES
JOHNSON CONTROLS, INC.
C.P. 86905; SPECS. 6487**

The services to be rendered by Johnson Controls, Inc. (JCI) will consist of services normally rendered when providing professional services of this nature, except as may be required to the contrary by the agreement, and as outlined in the Consultant's proposal dated May 15, 2007, and as described below.

SCOPE OF SERVICE

The scope of service will consist of low voltage systems design and installation for the Psychiatric Unit Conversion refurbishment project at the LAC+USC Medical Center. The work will be provided as required by the construction documents, Office of Statewide Health Planning and Development, California Building Code, and the Los Angeles County Uniform Building Code. These services include, but are not limited to, the following such as Nurse Call/Code Blue, Building Automation System, Fire Alarm/Life Safety, Security and Telecom low voltage systems including all related design and approvals, provision of systems materials and installation, and testing and warranty for each system.

The Scope of Work includes the Sections that comprise Division 17 -- Special Electrical Systems. This work will include the following Sections listed below and the Project Drawings dated March 21, 2007.

Division 17 -- Special Electrical Systems

- 17000 Building Automation Systems
- 17050 BAS Conduit and Wire
- 17100 Automatic Temperature Control System
- 17200 Addressable Life Safety Fire Alarm Systems
- 17300 Security General Provisions
- 17320 Conductors
- 17330 Grounding and Surge Protection
- 17410 Door Control Systems
- 17420 Programmable Logic Controllers
- 17450 Digital Video Recording System
- 17470 Control Panels and Consoles
- 17480 Access Control System
- 17550 Personal Alarm System
- 17650 Uninterruptible Power Systems
- 17700 Communications Cabling System

17750 Overhead Paging System
17800 Intercom System
17850 Nurse Call
17900 CATV System

Note: Section 17950 -- Master Clock System is excluded from this Scope of Work and is provided by others (Electrical Contractor)

SCHEDULE

The services shall be for the design and construction duration in accordance with the current approved Project Master Schedule.

COMPENSATION

After issuance of a written Notice to Proceed, JCI shall submit monthly invoices for review and approval by the County and in a format approved by both parties. Payment will follow upon approval by the County.

Design Services	\$ 40,000
Construction Services	\$375,000
Contingency (Needs prior written County approval)	\$ <u>35,000</u>
Total Not to Exceed Fee	\$450,000

ALTERNATIVE 1

INDEMNIFICATION AND INSURANCE PROVISIONS

I. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless COUNTY, its agents, appointed and elected officers, COUNTY Special DISTRICTS, and employees from and against any and all liability, expense (including defense costs and legal fees), lawsuits, actions, claims, proceedings, and damages of any nature whatsoever, including without limitation, brought for or on account of bodily injury, death, personal injury, or property damage (including property of Consultant), which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, representatives, contractors, subcontractors, consultants, or subconsultants of any tier.

The foregoing paragraph notwithstanding, Consultant further shall indemnify, defend, and hold harmless COUNTY, its agents, appointed and elected officers, COUNTY Special DISTRICTS, and employees from and against any Workers' Compensation suits, liability, or expense arising from, or connected with, any services performed pursuant to this AGREEMENT on behalf of Consultant by any person.

Neither the Consultant, nor its agents and subconsultants of any tier, shall be obligated to indemnify the COUNTY and its related persons and entities for liabilities caused by the active negligence of the COUNTY and its related persons and entities. However, this provision does not limit any obligation to insure and defend the COUNTY and its related persons and entities arising under the policies of insurance maintained by the Consultant under this provision.

II. INSURANCE

Without limiting Consultant's indemnification of COUNTY and during the term of this AGREEMENT, Consultant shall provide and maintain, at its own expense, the following programs of insurance. Such programs and evidence of insurance shall be satisfactory to the COUNTY and primary to, and not contributing with, any other insurance maintained by the COUNTY. Certificate(s) or other evidence of coverage shall be delivered to the Department of Public Works, Architectural Engineering Division, 900 South Fremont Avenue, 8th Floor, Alhambra, CA 91803, prior to commencing services under this AGREEMENT, shall specifically identify this AGREEMENT, and shall contain the express condition that COUNTY is to be given written notice by registered mail at least thirty (30) days in advance of any modification or termination of insurance.

Failure by Consultant to procure and maintain the required insurance shall constitute a material breach of contract upon which COUNTY may immediately terminate or suspend this AGREEMENT.

A. Liability:

Such insurance shall be endorsed naming the COUNTY of Los Angeles as an additional insured and shall include:

1. General liability insurance written on a commercial general liability form or on a comprehensive general liability form covering the hazards of premises/operations, contractual, independent contractors, advertising, products/completed operations, broad form property damage, and personal injury with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.
 - a. If written with an annual aggregate limit, the policy limit should be three (3) times the above-required occurrence limit.
 - b. If written on a Claims Made Form, the Consultant shall be required to provide an extended two-year reporting period commencing upon termination or cancellation of this AGREEMENT.
2. Comprehensive auto liability for all owned, non-owned, and hired vehicles with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.

B. Workers' Compensation:

Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with a One Million Dollar (\$1,000,000) limit, covering all persons the Consultant is legally required to cover.

C. Professional Liability:

Insurance covering liability arising from any error, omission, or negligent act of the Consultant, its officers, or employees with a limit of liability of not less than One Million Dollars (\$1,000,000) per claim or occurrence, and Two Million Dollars (\$2,000,000) in aggregate. If written on a Claims Made Form, Consultant shall continue to provide coverage for this project for a period of two (2) years from the date of termination or completion of this AGREEMENT.

Consultant agrees to the above Indemnification and Insurance Provisions.

Initials

ALTERNATIVE 2

INDEMNIFICATION AND INSURANCE PROVISIONS

A. **INSURANCE**: Consultant shall, at its own expense, maintain with insurance companies acceptable to the COUNTY general liability, professional liability, comprehensive automobile liability, and workers' compensation insurance as set forth below:

1. **General Liability Insurance**: The Consultant shall maintain general liability insurance written on a commercial or comprehensive general liability form(s) that include(s) coverage for premises-operations, products/completed operations, contractual liability, broad-form property damage, and personal injury liability. The general liability policy shall have a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.

2. **Professional Liability Insurance**: Consultant shall maintain professional liability insurance, including contractual liability coverage, with policy limits of at least One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

3. **Comprehensive Automobile Insurance**: The Consultant shall maintain automobile insurance for all owned, non-owned, and hired vehicles with a combined single limit of One Million Dollars (\$1,000,000) per occurrence or accident.

4. **Workers' Compensation Insurance**: The Consultant shall maintain workers' compensation insurance in an amount and form which will meet all applicable requirements of the Labor Code of the State of California, including Employers' Liability Coverage with limits of One Million Dollars (\$1,000,000) per occurrence.

5. **General Conditions Relating to Insurance**:

a. **Additional Insureds**: The COUNTY, DISTRICT, its agents, appointed and elected officers, COUNTY Special DISTRICTS, and employees ("COUNTY and its related persons and entities") shall be named as additional insureds on each policy, except workers' compensation and professional liability insurance, the Consultant is required to provide under this AGREEMENT. Such insurance shall be primary to, and not contributing with, any other insurance maintained by or for the COUNTY and its related persons and entities.

b. **Waiver of Subrogation**: Each policy obtained by the Consultant to fulfill its obligations under this provision shall contain a provision waiving the right of the insurer to subrogate against the COUNTY and its related persons and entities for any liability covered by the policy.

c. **Claims Made Policies:** If any of the policies obtained by the Consultant to fulfill its obligations under this provision are written on a claims-made basis, the policy shall be endorsed to provide an extended reporting period of not less than two years following the termination of this AGREEMENT or the Consultant's work on the project referred to in this AGREEMENT, whichever is later.

d. **Occurrence Policies:** If any of the policies obtained by the Consultant to fulfill its obligations under this provision are written on an occurrence basis, the policies and any endorsements required by this provision (including, but not limited to, the additional insured endorsements) shall be maintained in full force and effect for a period of not less than two years following the termination of this AGREEMENT or the Consultant's work on the project referred to in this AGREEMENT, whichever is later.

e. **Certificate of Insurance:** Prior to commencing work on the project referred to in this AGREEMENT, the Consultant shall provide to the COUNTY certificate(s) of insurance identifying the insurers, policies, coverages, and limits of liability for the insurance the Consultant is required to provide under this provision. Accompanying the certificate(s) shall be a copy of the required additional insured endorsement(s) to the policies obtained by the Consultant as set forth above.

f. **Notice of Cancellation or Nonrenewal:** Each policy shall require the insurer to give the COUNTY at least 30 days notice of termination of the policy by cancellation, rescission, nonrenewal, or otherwise. Notice shall also be given to COUNTY of any material change in the terms of the coverage required to be maintained by the Consultant under this provision.

g. **Delivery of Notices:** All certificates and notices required by this provision shall be in writing and shall be delivered to the Department Contract Administrator. The notices and certificates shall refer to this contract.

h. **Maintenance of Insurance:** The Consultant shall promptly pay the premiums on all insurance policies required under this provision. The Consultant further agrees that the policies shall remain in full force and effect as required by this AGREEMENT. Consultant shall immediately obtain replacement coverage for any policy which is terminated, canceled, non-renewed, or which has paid policy limits, or upon the insolvency of the insurer issuing the policy.

i. **Breach**: Failure on the part of Consultant to procure or maintain insurance as required by this provision shall constitute a material breach of this contract. In the event of such a breach, the COUNTY may, among other things, terminate this AGREEMENT, suspend work being performed on the project by or on behalf of the Consultant, or at its sole discretion, the COUNTY may obtain replacement coverage. In the event that replacement coverage is obtained, the Consultant shall, upon demand, repay the COUNTY for the full amount of premiums paid by the COUNTY for the replacement coverage. In its sole discretion, the COUNTY may offset the cost of premiums against any monies due to the Consultant from the COUNTY.

B. **INDEMNIFICATION**: To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless the COUNTY, DISTRICT, its agents, appointed and elected officers, COUNTY Special DISTRICTS, and employees ("COUNTY and its related persons and entities") from any and all claims, liabilities, expenses (including defense costs and legal fees), lawsuits, actions, proceedings, and damages of any nature whatsoever, including without limitation, brought for or on account of bodily injury, death, personal injury, or property damage (including property of Consultant), which arise out of, pertain to, or related to the negligence, recklessness or willful misconduct of the Consultant, its officers, agents, employees, representatives, contractors, subcontractors, consultants, or subconsultants of any tier. The obligation to indemnify the COUNTY is in addition to the obligation to procure insurance as set forth in this provision.

COUNTY agrees that prior to demanding a defense from the Consultant, that it or Consultant shall tender such claim to the insurers issuing the policies of insurance referred to in this provision. If the claims are not covered by any policy referred to in this provision, or the insurers fail or refuse to defend or indemnify the COUNTY or any of its related persons and entities, then the Consultant's duty to defend, indemnify and hold harmless the COUNTY under the foregoing indemnity provision shall apply in full.

Neither the Consultant, nor its agents and subconsultants of any tier, shall be obligated to indemnify the COUNTY and its related persons and entities for liabilities caused by the active negligence of the COUNTY and its related persons and entities. However, this provision does not limit any obligation to insure and defend the COUNTY and its related persons and entities arising under the policies of insurance maintained by the Consultant under this provision.

C. **SUBCONSULTANTS' INSURANCE AND INDEMNIFICATION**: Consultant shall require subcontractors, subconsultants, and independent contractors to maintain the same insurance coverage which it is required to maintain under this provision, including but not limited to, the obligation to name the COUNTY and its related persons and entities as additional insureds under each such policy.

Consultant further shall require its contractors, subcontractors, consultants, and subconsultants, to indemnify and defend the COUNTY and its related persons and entities from any and all claims, liabilities, expenses, lawsuits, actions, or proceedings arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of each contractor, subcontractor, consultant, subconsultant, or any tier.

Failure on the part of Consultant to require its subcontractors, subconsultants, and independent contractors to provide insurance and indemnification shall constitute a material breach of this contract. In the event of such breach, the COUNTY may, among other things, terminate this AGREEMENT, suspend work being performed on the project by or on behalf of the Consultant, or in its sole discretion, the COUNTY may obtain replacement insurance coverage. In the event that replacement coverage is obtained, the Consultant shall, upon demand, repay the COUNTY for the full amount of premiums paid by the COUNTY for the replacement coverage. In its sole discretion, the COUNTY may offset the cost of premiums against any monies due to the Consultant from the COUNTY.

Consultant agrees to the above Indemnification and Insurance Provisions.

Initials

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